

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, NOVEMBER 17, 2020

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. URS-2020-00378

Ex Parte: In the matter of adopting new
rules of the State Corporation Commission
governing operator's responsibilities to
redistribute topsoil under § 56-257.5
of the Code of Virginia

ORDER FOR NOTICE AND COMMENT

During its 2020 Session, the Virginia General Assembly enacted Chapter 666 (HB 723) of the 2020 Virginia Acts of Assembly ("Act"), which became effective on July 1, 2020. The Act, *inter alia*, amended the Code of Virginia by adding a section, § 56-257.5 (the "Statute"), to require the State Corporation Commission ("Commission") to establish rules by which operators are required to remove topsoil from certain planned construction sites and either redistribute it or store it for later redistribution on the disturbed area. Under the Statute, topsoil is defined as at least 12 inches of the surface soil layer or a six-inch layer of soil that includes the surface soil and the unconsolidated subsoil immediately below it. Additionally, operator is defined as any person who owns, furnishes or transports materials or services by means of a utility line. Further, underground utility line is defined as underground pipeline or conduit of an inside diameter greater than 12 inches or an underground electrical transmission or distribution line of a capacity greater than 115 kilovolts.

The Statute requires the Commission to adopt regulations applicable to any operator having the right to install an underground utility line. The Statute further requires the regulations to require that if such operator, in the course of installing the underground utility line, disturbs an area of land that measures 10,000 square feet or more and constitutes one or more agricultural operations, as defined in § 3.2-300, the operator shall, if desired by the landowner or land

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management agency, either redistribute the topsoil removed from the disturbed area to graded areas elsewhere on the land of the affected property owner or if insufficient graded areas are available as sites for such redistribution, stockpile the topsoil removed from the disturbed area until it can be redistributed on the area initially disturbed. The Statute mandates that redistributed topsoil be placed on scarified land and that stockpiled topsoil be protected from erosion and compaction or, if the property owner does not agree, then the topsoil shall be disposed of in accordance with applicable law.

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that a proceeding should be established to promulgate rules governing operator's responsibilities to redistribute topsoil. To initiate this proceeding, the Commission's Staff ("Staff") has prepared proposed rules which are appended to this Order ("Proposed Rules"). We will direct that notice of the Proposed Rules be given to the public and that interested persons be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules. We further find that a copy of the Proposed Rules should be sent to the Registrar of Regulations for publication in the *Virginia Register of Regulations*.

The Commission further takes judicial notice of the ongoing public health emergency related to the spread of the coronavirus, or COVID-19, and the declarations of emergency issued at both the state and federal levels.¹ The Commission has taken certain actions, and may take

¹ See, e.g., Executive Order No. 51, Declaration of a State of Emergency Due to Novel Coronavirus, COVID-19, issued March 12, 2020, by Gov. Ralph S. Northam. See also Executive Order No. 53, Temporary Restrictions on Restaurants, Recreational, Entertainment, Gatherings, Non-Essential Retail Businesses, and Closure of K-12 Schools Due to Novel Coronavirus (COVID-19), issued March 23, 2020, by Governor Ralph S. Northam, and Executive Order No. 55, Temporary Stay at Home Order Due to Novel Coronavirus (COVID-19), issued March 30, 2020, by Governor Ralph S. Northam. These and subsequent Executive Orders related to COVID-19 may be found at: <https://www.governor.virginia.gov/executive-actions/>.

additional actions going forward, which could impact the procedures in this proceeding.²

Consistent with these actions, in regard to the terms of the procedural framework established below, the Commission will, among other things, direct the electronic filing of comments.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed as Case No. URS-2020-00378.

(2) All filings in this matter shall be submitted electronically to the extent authorized by Rule 5 VAC 5-20-150, *Copies and Format*, of the Commission's Rules of Practice and Procedure.³ For the duration of the COVID-19 emergency, any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.⁴

(3) The Commission's Division of Information Resources shall forward a copy of this Order for Notice and Comment ("Order"), including a copy of the Proposed Rules, to the Registrar of Regulations for publication in the *Virginia Register of Regulations*.

² See, e.g., *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic Service of Commission Orders*, Case No. CLK-2020-00004, Doc. Con. Cen. No. 200330035, Order Concerning Electronic Service of Commission Orders (Mar. 19, 2020), *extended by* Doc. Con. Cen. No. 200520105, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (May 11, 2020); *Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte: Revised Operating Procedures During COVID-19 Emergency*, Case No. CLK-2020-00005, Doc. Con. Cen. No. 200330042, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (Mar. 19, 2020) ("Revised Operating Procedures Order"), *extended by* Doc. Con. Cen. No. 200520105, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (May 11, 2020); *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic service among parties during COVID-19 emergency*, Case No. CLK-2020-00007, Doc. Con. Cen. No. 200410009, Order Requiring Electronic Service (Apr. 1, 2020).

³ 5 VAC 5-20-10 *et seq.*

⁴ As noted in the Revised Operating Procedures Order, submissions to the Commission's Clerk's Office via U.S. mail or commercial mail equivalents may not be processed for an indefinite period of time due to the COVID-19 emergency.

(4) Within five (5) business days of the date of this Order, the Commission's Division of Utility and Railroad Safety shall transmit electronically copies of this Order to those persons and entities identified by Staff as potentially having an interest in this matter.

(5) An electronic copy of these rules may be obtained by submitting a request to Lauren C. Govoni, Deputy Director of the Division of Utility and Railroad Safety, Lauren.Govoni@scc.virginia.gov. An electronic copy of the Proposed Rules can also be found at the Division of Public Utility Regulation's website: scc.virginia.gov/pages/Rulemaking. Additionally, interested persons may download unofficial copies of the Order and the Proposed Rules from the Commission's website: scc.virginia.gov/pages/Case-Information.

(6) On or before December 21, 2020, any interested person may file comments on the Proposed Rules by following the instructions found on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments. Such comments may also include proposed modifications and hearing requests. All filings shall refer to Case No. URS-2020-00378. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be addressed adequately in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the papers filed herein.

(7) On or before January 18, 2021, the Staff may file with the Clerk of the Commission a report on or a response to any comments, proposals, or requests for hearing submitted to the Commission on the Proposed Rules.

(8) This matter is continued.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission. A copy hereof also shall be sent to the Commission's Office of General Counsel and Divisions of Public Utility Regulation and Utility Accounting and Finance.

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Project 6548 - None

State Corporation Commission

CH 355 Operator's Responsibilities to Redistribute Topsoil

CHAPTER 355

RULES GOVERNING OPERATOR'S RESPONSIBILITY TO REDISTRIBUTE TOPSOIL

20VAC5-355-10. Applicability.

This chapter sets forth requirements for operators installing underground pipeline or conduit, with an inside diameter greater than 12 inches or an underground electric transmission or distribution line of greater than 115 kilovolts in capacity, to mitigate the effects of the project if the project disturbs 10,000 square feet or more of agricultural land. Such operators shall remove topsoil from the planned construction site and either redistribute the topsoil to graded areas elsewhere on the land of the affected property owner, or store it nearby, protected from erosion and compaction, for later redistribution on the disturbed area.

20VAC5-355-20. Definitions.

The following terms shall have the following meanings, unless the context clearly indicates otherwise:

"Operator" means any person who owns, furnishes or transports materials or services by means of a utility line.

"Topsoil" means at least 12 inches of the surface soil layer or a six-inch layer of soil that includes the surface soil and the unconsolidated subsoil immediately below it.

"Underground utility line" means an underground pipeline or conduit of an inside diameter greater than 12 inches or an underground electrical transmission or distribution line of a capacity greater than 115 kilovolts.

20VAC5-355-30. Operator's responsibilities to redistribute topsail; waiver.

A. If any operator, in the course of installing an underground utility line, disturbs an area of land that measures 10,000 square feet or more and constitutes one or more agricultural operations, as defined in § 3.2-300 of the Code of Virginia, the operator shall, if desired by the landowner or land management agency, take the following actions:

1. Redistribute the topsoil removed from the disturbed area to graded areas elsewhere on the land of the affected property owner; or

2. If insufficient graded areas are available as sites for such redistribution, stockpile the topsoil removed from the disturbed area until it can be redistributed on the area initially disturbed.

B. Operators redistributing topsoil pursuant to this section shall place the topsoil on scarified land and shall protect the topsoil from erosion and compaction.

C. If the property owner does not agree to the redistribution of topsoil pursuant to this section, the topsoil shall be disposed of in accordance with other applicable law.

D. A request or waiver of any of the provisions in this chapter shall be considered by the State Corporation Commission on a case-by-case basis and may be granted upon such terms and conditions as the State Corporation Commission may impose.